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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,513	01/23/2002	Anthony Brennan	1442026	9358
23405	7590	08/03/2004	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC			FETSUGA, ROBERT M	
5 COLUMBIA CIRCLE			ART UNIT	PAPER NUMBER
ALBANY, NY 12203			3751	

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,513

Applicant(s)

BRENNAN ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 19,20,22,33 and 37-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,21,24-32,34-36,40 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The disclosure is objected to because of the following informalities: Paragraph 0026, lines 5 and 8, reference numerals "205" and "210" designate the same element.

Appropriate correction is required.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter.

See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "affixed" limitation set forth in claims 1, 24, 28, 34 and 40 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant's did not address this term in the response filed June 30, 2004.

3. Claims 1-18, 21, 23-32, 34-36, 40 and 41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Claim 1 recites a body "immovable and affixed to said surface during operation". This subject matter is not described in the instant specification and is therefore considered to be new matter. Claims 24, 28, 34 and 40 similarly recite the noted subject matter.

Applicant's argue at page 11 of the response the claimed device is immovable because the drawings illustrate the system (body) attached to the wall of a spa by a nut. However, there is no "nut" recited in the claims. Furthermore, according to The American Heritage Dictionary", the normal meaning of the term "immovable" is --incapable of being moved--. Clearly, applicants' system body 11 is capable of being moved in the absence of nut 260.

4. Claims 1, 3, 4, 10, 21 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to whether the "hydrotherapy tub" is intended to be part of the claimed combination since structure of the "fluid flow system" is defined as being connected thereto (lns. 4-5), but no positive

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structural antecedent basis therefor has been defined.

Claim 28 is similarly indefinite.

Claims 3, 4, 10 and 21 are redundant to claim 1.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-10, 16-18, 21, 23-32, 34-36, 40 and 41, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin '259 and Gardenier et al.

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Claims 1 and 28 are considered drawn to the combination of a fluid flow system and a hydrotherapy tub as the claims now structurally connect these elements, and applicant presents arguments to that effect at pages 12-14 of the response.

The Martin '259 ('259) reference (Fig. 11) reference discloses a fluid flow system comprising: a body 83 including a first chamber 100 having an inlet 98, a second chamber 99 having an inlet 94, and a plurality of perpendicular outlets (means) 102,103; a hydrotherapy tub 39 including an inner surface; an air source (communicating with 94); and a water source (communicating with 98). Re claims 16-18 and 32, note page 5, lines 46-52. Therefore, '259 discloses all claimed elements except for the provision of an opening through the tub surface.

Although the inlets of the '259 hydrotherapy tub do not extend through an opening, as claimed, attention is directed to the Gardenier et al. (Gardenier) reference which discloses an analogous hydrotherapy tub which further includes inlets 12,14 extending through an opening (receiving 50). Therefore, in consideration of Gardenier, it would have been obvious to one of ordinary skill in the

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art to associate an opening with the '259 tub in order to facilitate installation.

Applicant's argue at pages 14-15 of the response perceived deficiencies of the '259 reference individually, however, nonobviousness can not be established by attacking references individually when a rejection is predicated upon a combination of prior art disclosures. Not surprisingly, the teachings of Gardenier were not addressed by applicant's in regard to these perceived deficiencies. In any event, '259 teaches that the fluid flow installation in tub 39 is merely an exemplary installation (pg. 2 lns. 103-106). Therefore, Martin does not "teach away" from other types of installations, as argued. On the other hand, Gardenier teaches another exemplary fluid flow installation, albeit a modern day type of installation, which includes extending fluid inlets through an opening in a tub surface/wall, thus concealing the conduits, etc., from view. Ultimately, the purpose of both the '259 and Gardenier fluid flow systems is to provide hydrotherapy via air and water jets which are connected to respective fluid chambers formed in a body supported on the bottom surface of a tub. Whether the fluid inlets to the chambers extend through an opening in a tub surface/wall (like current day

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practice), or extend over the wall of the tub (like old practice), would not affect the ability of the systems to meet the stated objective of delivering hydrotherapy.

Therefore, one skilled in the art would need to look no further than the disclosures of '259 and Gardenier to arrive at applicants' claimed invention.

7. Claims 11-15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over '259 either alone or taken with Gardenier as applied to claim 1 above, and further in view of Guiler.

Although the injectors 102,103 of the '259 hydrotherapy tub do not include conical structures, as claimed, attention is directed to the Guiler reference which discloses an analogous hydrotherapy tub which further includes an injector 2 having a conical structure 18. Therefore, in consideration of Guiler, it would have been obvious to one of ordinary skill in the art to associate conical structures with the '259 injectors in order to increase flow velocity.

Applicant has acquiesced to this grounds of rejection by not responding substantively thereto.

8. Applicant's remaining remarks have been fully considered and either have been previously addressed or are

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not deemed persuasive in view of the prior art as specifically applied in light of the level of skill in the pertinent art.

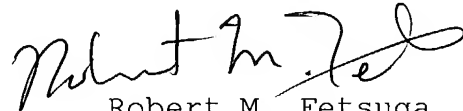
9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.

A handwritten signature in dark ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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